



January 22, 2024

The Honorable Sarah Netburn
United States Magistrate Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square Room 430
New York, NY 1000

Re: *Lynne Freeman v. Tracy Deeks-Elkenaney et. al.*, Case No. 22 Civ 2435 (LLS) (SN)

Dear Judge Netburn:

We represent Plaintiff Lynne Freeman in the above captioned matter. We write to respectfully request a one-week extension to February 7 to submit the filings currently due on January 31, 2024,¹ specifically Plaintiff's (1) brief not to exceed 50 pages and supporting papers constituting Plaintiff's reply in support of her motion for summary judgment and in opposition to Defendants' motion for summary judgment on the copyright issues; and (2) her brief not to exceed 20 pages and supporting papers in opposition to the Prospect Defendants' motion for summary judgment on the state law claims (collectively "Opposition Papers").

Although the Court stated in its Second Amended Scheduling Order dated October 11, 2023 (ECF 269) that no further extensions would be granted, unanticipated and unavoidable time commitments have arisen for Plaintiff's counsel such that Plaintiff stands to be significantly prejudiced if the Court does not grant this request for an additional week to complete Plaintiff's filings. These commitments include the following:

- (1) Stephen Doniger, the lead attorney preparing the Opposition Papers, has had to take or defend seven (7) depositions so far this month, four (4) of which were entirely unanticipated.
- (2) Between those depositions and the regular press of business, Mr. Doniger's time was consumed with a summary judgment opposition he filed on January 18, 2024 in the case *Musero v. Creative Artist Agency, et al.*, Los Angeles Superior Court Case No. 19STCV10435, pending before the Hon. Kerry R. Bensinger. The Separate Statement of Undisputed Material Facts and Evidence alone was 113 pages.

¹ ECF 269 & 294 established the current January 31, 2024 deadline and the page numbers for the parties' briefs due on that date.

Page 2

January 22, 2024

- (3) Plaintiff's counsel has been working diligently to prepare its opposition brief, but Mr. Doniger is also preparing for and will be conducting an arbitration before the International Center for Dispute Resolution January 23-25 in the matter of *Fantastic Films International, LLC. V. Screen Media Ventures, LLC*, Arbitration Case No.: 01-22-0003-5599. As lead counsel, he will be delivering opening statements, closing arguments, and handling the examinations of at least three (3) of the anticipated five (5) witnesses. This arbitration was to have taken place in December, but was continued on December 11, 2023 to January 23, 2024.
- (4) Towards the end of last week opposing counsel in the *Fantastic Films* matter served Mr. Doniger's office with three motions *in limine* that need to be addressed prior to the commencement of arbitration on Tuesday.
- (5) In addition to the foregoing, Mr. Doniger has an appellate brief due on February 1, 2024 in the case *AMI v. Dollar Shave Club*, Los Angeles Superior Court Case No: 19STCV27360 and California Court of Appeal (Second Appellate District) Case No. B326495. That opening brief is limited to 14,000 words and Mr. Doniger's current draft, after significant editing and revisions, is over 17,000 words. His motion to file an oversized opening brief was denied on January 9, 2024, and getting that brief down to size will be a difficult and time-consuming task.

Although Plaintiff's counsel was given 39 days to prepare their Opposition Papers, those days included the Christmas and New Year's holidays. Moreover, preparing the Opposition papers turned out to be a bigger job than anticipated. Plaintiff was served by Defendants on December 22, 2023 with the following papers:

- (1) A 50-page memorandum of law in support of Defendants' motion for summary judgment on the Copyright issues;
- (2) A 15-page memorandum of law in support of the Prospect Defendants' motion for summary judgment on the state law claims;
- (3) Defendants' consolidated Rule 56.1 statement consisting of 153 paragraphs;
- (4) Five (5) declarations consisting of over 65 pages and accompanying exhibits;
- (5) A notice for request for judicial notice;
- (6) Defendants' objections and motion to strike evidence consisting of 15 pages;
- (7) A 74-page counter statement to plaintiff's Rule 56.1 Statement; and
- (8) A motion to seal.

Page 3

January 22, 2024

I have obviously been working on the papers as well, but was sick with a bad virus during the holidays and early January which required two in person and one virtual visit to urgent care. Unfortunately, I suffered a relapse on Friday. Although I can still work, I cannot put in as many hours on the papers as I would otherwise be able to do. For example, although I planned on working all day on Sunday, I was only able to work about half of the day. Of course, during the same time period, I also have to spend time on the other matters I am handling.

The prejudice to defendants due to a one-week delay is minimal and is outweighed by the prejudice that Plaintiff would suffer if the extension were not granted. Defendants' counsel would not agree to the extension, but asked that if we file a motion, we advise the Court that if the motion is granted both parties' deadlines should be extended.²

Accordingly, we respectfully request that both Plaintiff and Defendants' January 31, 2024 deadlines to file papers be extended to and including February 7, 2024. If the Court grants the extension, the parties' February 21, 2024 deadline to file papers should also be extended one-week to and including February 28, 2024.³ If the Court is inclined to deny the motion, Plaintiff requests that we have a telephonic hearing on the matter.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

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² Defendants' Daubert motion is due on January 31, 2024.

³ February 21, 2024 is the deadline for the Publishing Defendants and the Prospect Defendants to file their respective reply briefs in support of their motions for summary judgment and Plaintiff's deadline to file her opposition to Defendants' Daubert motion.

Page 4
January 22, 2024

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cc: All counsel of record (via ECF)